

**LODI CITY COUNCIL
REGULAR CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, NOVEMBER 20, 2002**

C-1 CALL TO ORDER / ROLL CALL

The City Council Closed Session meeting of November 20, 2002 was called to order by Mayor Pennino at 5:48 p.m.

Present: Council Members – Hitchcock (arrived at 5:51 p.m.), Howard, Land, and Mayor Pennino

Absent: Council Members – Nakanishi

Also Present: City Manager Flynn, City Attorney Hays, and City Clerk Blackston

C-2 ANNOUNCEMENT OF CLOSED SESSION

a) Actual litigation: Government Code §54956.9(a); one case; Leveille vs. City of Lodi et al., U.S. District Court, Eastern District, Case No. CIV S-00-1729 DFL DAD

b) Actual litigation: Government Code §54956.9(a); one case; Citizens for a Quiet Kofu Park vs. City of Lodi, San Joaquin County Superior Court Case No. CV 014871

c) Actual litigation: Government Code §54956.9(a); one case; City of Lodi vs. Williams-Anderson, et al., San Joaquin Superior Court Case No. CV 426433

C-3 ADJOURN TO CLOSED SESSION

At 5:48 p.m., Mayor Pennino adjourned the meeting to a Closed Session to discuss the above matters.

The Closed Session adjourned at 6:50 p.m.

C-4 RETURN TO OPEN SESSION / DISCLOSURE OF ACTION

At 7:00 p.m., Mayor Pennino reconvened the City Council meeting, and City Attorney Hays disclosed the following actions.

In regard to Items C-2 (a), (b), and (c) Council provided direction to staff with regard to settlement activities.

A. CALL TO ORDER / ROLL CALL

The Regular City Council meeting of November 20, 2002 was called to order by Mayor Pennino at 7:00 p.m.

Present: Council Members – Hitchcock, Howard, Land, Nakanishi, and Mayor Pennino

Absent: Council Members – None

Also Present: City Manager Flynn, City Attorney Hays, and City Clerk Blackston

B. INVOCATION

The invocation was given by Pastor LeRoy Olson, Bear Creek Community Church.

C. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Pennino.

D. AWARDS / PROCLAMATIONS / PRESENTATIONS

D-1 Awards – None

D-2 Proclamations – None

D-3 (a) Mayor Pennino presented a Certificate of Recognition to Boy Scout Cameron John Heberle in recognition of his obtaining the rank of Eagle Scout.

- D-3 (b) Courtney Cook, member of the Greater Lodi Area Youth Commission, provided an update on the activities of the Commission and presented the Teen of the Month award to Heather Worden from St. Mary's High School.
- D-3 (d) Bob Johnson, Chairman of the Lodi Parks and Recreation Commission, reported that the National Guard Armory has been renovated. Due to the lease of the Armory to the City there are now five more teams on the Comet and Junior Basketball League (JBL) programs and the adult basketball program has increased by two teams. In addition, 100 youth ages 8 to 13 have participated in a volleyball program. The high schools have booked the Armory for a sock hop. The facility is booked through February with open gym on a daily basis and youth team practice Monday through Friday at 5:00 p.m. Renovation of Zupo Field continues. Due to State and County budget cuts the after school program at Lockeford School has ended. Funding was lost for the program at Heritage Elementary School as well, although the program continues due to staff rescheduling efforts. Camp Lodi Lake will not be held next summer. With the recent passage of Proposition 49, new funding for these programs is anticipated in the future. To date the Parks and Recreation Department has fingerprinted over 1,400 people to work in youth programs. A meeting is scheduled tomorrow with the architectural firm of Wenell, Mattheis and Bowe regarding renovation of the Discovery Center at Lodi Lake. In conclusion, Mr. Johnson reported that a plan to utilize a significant portion of the ProStyle Sports donation will be brought to Council in early 2003.
- D-3 (c) Dee Bassett reported that the Adopt-A-Child Christmas program is now underway and angel tags for 1,800 children have been prepared. She noted that volunteers are also needed.

Council Member Howard commented that she was impressed by the renovation efforts that have taken place at the Adopt-A-Child facility at 100 E. Pine Street.

E. CONSENT CALENDAR

In accordance with the report and recommendation of the City Manager, Council, on motion of Council Member Land, Nakanishi second, unanimously approved the following items hereinafter set forth **except those otherwise noted**:

- E-1 Claims were approved in the amount of \$4,856,868.31.
- E-2 The minutes of November 6, 2002 (Regular Meeting) were approved as written.
- E-3 Accepted the scoreboard donated by the Boosters of Boys and Girls Sports (BOBS).
- E-4 "Adopt resolution accepting donation of seven antique phonographs from the Stanley Kirst Family" was ***pulled from the agenda at the request of the Kirst Family.***
- E-5 Adopted Resolution No. 2002-227 awarding the contract for the Lawrence Park Playground Improvements, 350 N. Washington Street, to A.M. Stephens Construction Company in the amount of \$106,401.85; and appropriated funds in accordance with staff recommendation.
- E-6 Adopted Resolution No. 2002-228 implementing the City of Lodi's Best Available Control Measures for Particulate Matter (dust) in accordance with the San Joaquin Valley Air Pollution Control District's proposed regulations.
- E-7 "Adopt resolution authorizing the City Manager to execute lease amendment for Lodi Station North Annex with Cheryl Lafebre, dba Lodi Greyhound and Western Union" was ***removed from the Consent Calendar and discussed and acted upon under the Regular Calendar.***

- E-8 Adopted Resolution No. 2002-229 authorizing the City Manager to enter into a professional services agreement with RBF Consulting for the preparation of an Environmental Impact Report to analyze impacts associated with a proposed commercial center at the northwest corner of Lower Sacramento Road and Kettleman Lane.
 - E-9 Adopted Resolution No. 2002-230 authorizing the City Manager to terminate the City of Alameda Power Exchange Agreement.
 - E-10 Adopted Resolution No. 2002-231 authorizing the City Manager to provide funding in the amount of \$30,000 to extend the Public Benefits Program Grant Lodi Small Business Energy Services Partnership.
 - E-11 Adopted Resolution No. 2002-232 authorizing the City Manager to provide funding in the amount of \$75,000 to extend the Public Benefits Program Grant Lodi Air Duct Testing and Attic Insulation Rebate Program.
 - E-12 Adopted Resolution No. 2002-233 authorizing the City Manager to provide funding in the amount of \$70,000 to extend the Public Benefits Program Grant Lodi Appliance Rebate Program.
 - E-13 Adopted Resolution No. 2002-234 authorizing the City Manager to provide funding in the amount of \$25,000 to extend the Public Benefits Program Grant Lodi Energy Efficient Window and Shade Screen Program.
 - E-14 Adopted Resolution No. 2002-235 approving Year 2002 Amendments to Conflict of Interest Code (Government Code §87306.5).
 - E-15 Introduced Ordinance No. 1726 amending Title 9, Chapter 9.04, "Offenses Against Public Decency," by adding Section 9.04.030 "Prohibiting Public Urination and Defecation."
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F. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS

None.

G. PUBLIC HEARINGS

- G-1 Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Pennino called for the Public Hearing to consider unmet transit needs in Lodi.

Tiffani Fink, Transportation Manager, stated that Michael Swearingen from the San Joaquin Council of Governments (SJCOG) is in the audience and will record citizen comments related to unmet transit needs in Lodi. This process is required annually under the State Transportation Development Act. A notice regarding the public hearing was published in the Lodi News-Sentinel. An additional meeting will be held next Monday at 1:00 p.m. in the Carnegie Forum. Comments can also be sent directly to SJCOG who will be preparing the annual unmet transit needs report.

In reply to Council Member Howard, Ms. Fink explained that the issue regarding service outside of regular operations will be coming back to Council in December. The matter before Council at this time is to gather information related to Dial-A-Ride and Grapeline services within the City to identify any needs in regular operations which may not be met and determine if it is reasonable to extend services to cover those needs. Ms. Fink reported that the express route, which began in August, has been very successful. In the first month one of the routes had 1,500 riders. There are three routes in the morning and afternoon, which serve Lodi High School, Tokay High School, Lodi Middle School, and Woodbridge Middle School.

Hearing Opened to the Public

None.

Public Portion of Hearing Closed

In response to Mayor Pro Tempore Hitchcock, Ms. Fink reported that the Regional Transit District has held previous meetings on this subject, and thus far no comments have been received regarding unmet transit needs.

Council Member Land noted that Stockton Regional Transit started a new ridership program in Lodi called the Hopper.

Ms. Fink explained that the Regional Transit District covers the city of Stockton and outlying county areas. The purpose of the Hopper is to connect people from areas such as Thornton, Clements, and Lockeford into Lodi enabling them to use the City's services.

MOTION / VOTE:

There was no action required to be taken by the Council.

- G-2 Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Pennino called for the Public Hearing to consider the reallocation of Community Development Block Grant/HOME funds in the amount of \$65,363 to the Housing Authority of San Joaquin County.

Community Development Director Bartlam reported that staff is bringing forward a request by the Housing Authority of San Joaquin to reallocate existing HOME program funds for the rehabilitation and reconstruction of one unit of a six-unit complex on south Washington Street that it purchased last year in conjunction with Lodi House to provide transitional housing. Mr. Bartlam recalled that the Housing Authority applied last year for \$95,000 to repair the unit. It was subsequently determined that it would be more cost effective to demolish the unit and rebuild it, for which funds of \$65,363 are now being requested. Mr. Bartlam reported that these funds are currently allocated to the City's Down Payment Assistance Program, which now has just over \$200,000. In addition there is \$150,000 remaining in the Block Grant Housing Down Payment Program.

In response to questions posed by Mayor Pro Tempore Hitchcock, Mr. Bartlam stated that new applicants were not sought because there was no one else competing for HOME program funds last year. The process for allocation of next year's funds will begin in December. Mr. Bartlam reported that the Salvation Army currently does not qualify for Block Grant/HOME funds.

Council Member Land noted that the Salvation Army has another corporation, Salvation Service, Inc., which it thinks will qualify for CDBG funds for use with the food bank. He stated that the Housing Authority has done an outstanding job of cleaning up five units of the complex, which he described as previously being a code enforcement "nightmare." The complex will be a Section 8 housing unit and will help alleviate some of the overcrowding that exists at Lodi House.

Hearing Opened to the Public

None.

Public Portion of Hearing Closed

MOTION / VOTE:

The City Council, on motion of Mayor Pro Tempore Hitchcock, Howard second, unanimously adopted Resolution No. 2002-236 approving the reallocation of Community Development Block Grant/HOME funds in the amount of \$65,363 to the Housing Authority of San Joaquin County

H. COMMUNICATIONS

H-1 Claims filed against the City of Lodi – None

H-2 Reports: Boards/Commissions/Task Forces/Committees – None

H-3 The following postings/appointments were made:

- a) The City Council, on motion of Council Member Land, Hitchcock second, unanimously made the following appointments:

East Side Improvement Committee

R. J. Hutton Term to expire March 1, 2005

Lodi Arts Commission

Hugh Metcalf Term to expire July 1, 2004

- b) The City Council, on motion of Council Member Land, Nakanishi second, unanimously directed the City Clerk to post for the following expiring terms:

Lodi Senior Citizens Commission

Richard Sanford Term to expire December 31, 2002

Parks and Recreation Commission

Ken Sasaki Term to expire December 31, 2002

Ed Wall, Jr. Term to expire December 31, 2002

Robert J. Johnson Term to expire December 31, 2002

H-4 Miscellaneous

- a) City Clerk Blackston provided the cumulative Monthly Protocol Account Report through October 31, 2002.

I. REGULAR CALENDAR

I-1 “Adopt resolution designating the rose as the official flower of the City of Lodi”

Deputy City Manager Keeter reported that the City was approached by the Lodi Woodbridge Rose Society to designate the rose as the official flower of the City of Lodi. At its last meeting the Parks and Recreation Commission unanimously supported the concept. In addition, letters of support have been received from the Lodi Garden Club, Lodi Memorial Hospital, and an officer of the National Board of Directors of the American Rose Society. A voicemail message from County Supervisor Jack Sieglöck also encouraged Council's support of the recommendation.

Mike Devencenzi, President of the Lodi Woodbridge Rose Society, reported that the Society began four years ago and now has 85 members. The next annual rose show in Lodi is scheduled for September 27, 2003. The Society has offered to donate six red hybrid tea roses, named Veterans Honor, and plant them around the All Veterans Plaza flag pole. He noted that the rose is the national flower and 2002 was designated the “year of the rose.” The rose is a symbol of honor, pride, passion, and love.

In answer to Mayor Pro Tempore Hitchcock, Mr. Devencenzi clarified that the recommendation is not for a specific type of rose.

Council Member Howard questioned whether the City's logo or signage would be changed as a result of this designation.

City Manager Flynn replied that the grape would continue to be used as the City's logo, unless specific direction was given to do otherwise.

MOTION/ VOTE:

The City Council, on motion of Council Member Land, Howard second, unanimously adopted Resolution No. 2002-237 designating the rose as the official flower of the City of Lodi.

- I-2 "Accept Supplement A to the City of Lodi's Bicycle Transportation Master Plan to reflect completed work to date and adopt resolution approving the submittal of a grant proposal from the City of Lodi for the California Department of Transportation's Bicycle Transportation Account Grant"

Tiffani Fink, Transportation Manager, recalled that the Transportation Master Plan was adopted in November 1994. Its goals include: 1) providing bicycle facilities to serve the needs of all types of cyclists in Lodi; 2) coordinate with facilities that exist or are proposed within San Joaquin County; 3) allow for priority use by bicyclists on some trails and streets, and 4) provide a continuous network of bicycle lanes, separated paths, and facilities, which support bicycling as a commute option. The proposed supplement to the bicycle Transportation Master Plan will add additional maps illustrating the bicycle lanes and paths that have been completed since 1994. In addition, staff recommends that approval be given to submit a grant proposal for the California Department of Transportation's Bicycle Transportation Account Grant to add seven more class two lanes. These lanes would be added on the following streets:

- Turner Road from Pleasant Avenue to Highway 99
- Stockton Street from Kettleman Lane to Harney Lane
- Lower Sacramento Road from Kettleman Lane to Harney Lane
- Harney Lane from the irrigation district to Mills Avenue
- Lodi Avenue from Lower Sacramento Road to Ham Lane
- Elm Street from Lower Sacramento Road to Evergreen Drive
- Elm Street from Stockton Street to Cherokee Lane

Council Member Land noted that the grant requires 10% matching funds and asked whether there is Measure K funding available, to which Ms. Fink answered in the affirmative.

Mayor Pennino suggested that Elm Street between Church and Stockton Streets be considered for a bike lane in the future, due to the proposed indoor sports center.

MOTION / VOTE:

The City Council, on motion of Council Member Nakanishi, Land second, unanimously accepted Supplement A to the City of Lodi's Bicycle Transportation Master Plan to reflect completed work to date and adopted Resolution No. 2002-238 approving the submittal of a grant proposal from the City of Lodi for the California Department of Transportation's Bicycle Transportation Account Grant.

- I-3 "Authorize the City Manager to execute short-term funding agreements for the construction of the Harney Lane Lift Station and adopt resolution extending the deadline for final map approval and retention of prior development impact mitigation fees and payment procedures for the Century Meadows One, Two, and Three residential subdivision projects"

Wally Sandelin, City Engineer, explained that staff is requesting that Council consider two actions under this item: 1) decide on a new funding program for construction of the Harney Lane Lift Station, and 2) adopt a resolution that would extend for six months the filing deadline for the final maps on Century Meadows 1, 2, and 3. The project consists of a fairly deep sewer trunk line between the Woodbridge Irrigation District (WID) canal on the east end and the new pump station location at the intersection of Mills Avenue and Harney Lane. It includes construction of a major pumping facility and the force main that would carry the wastewater from the pump station up to the trunk line in Century Boulevard. The service area includes a large area on the south side as well as the north side of Harney Lane and some areas on the west end. The Harney Lane Lift Station has been planned for many years and is required to serve these areas. At this time no further development can occur in the region without the lift station in operation. The estimated cost of the lift station is \$1,138,000. In 1992 the City approved an agreement with the Fink Group to fund over sizing of the lift station project. As a result, the Fink Group is providing \$178,000 in construction funding. In 1996 the Council authorized design of the

lift station at a final cost of \$27,000. In 2002 the Council authorized the allocation of \$120,000 to reimburse the Century Meadows 3 project for construction of the force main improvements in Mills Avenue. At present Council has advanced a total of \$164,000 toward this lift station project. On October 16 Council did not approve a funding program that would have established long-term funding, i.e. reimbursement to the City beyond 7 to 10 years, and directed staff to develop an alternative. The alternative was reached through discussion with staff, developers, and the City Manager and is presented as Option 1 in the staff report. Option 1 is staff's recommendation that a \$394,000 loan be made to the Century Meadow 1, Unit 2 project, at an interest rate of 1% above the Local Agency Investment Fund rate for a period of up to seven years. The City advance of \$174,000 would immediately be repaid. In addition, reimbursements from adjacent projects would be applied to the principle balance as they are received by the City. As future projects develop to the west, those reimbursements would also be applied to the principle. All told those projects amount to approximately \$350,000 in reimbursements to the City once the final maps are processed. Option 2 is to reject Option 1 and maintain the decision that Council made on October 16. Mr. Sandelin reiterated that staff is also requesting that Council adopt a resolution to extend the filing deadline to June 30, 2003 for the final maps of Century Meadows 1, 2, and 3. This is being requested because the Century Meadows 1 project experienced some difficulties in securing required easements that had to be in hand before they could process their final map to Council for approval. It was not possible for Century Meadows 2 or 3 to take on the obligation of funding the lift station project by virtue of their small size. The deadline extension allows these projects to retain the current fee schedule and payment procedures, and delays the application of the higher fees that were adopted by the Council October 17, 2001.

Council Member Howard asked whether it was the developer's request that the deadline be extended to June, to which Mr. Sandelin replied in the affirmative.

In reply to Mayor Pro Tempore Hitchcock, Mr. Sandelin reported that staff is expecting to bring the final maps to Council for acceptance on Century Meadows 2, 3, and the first phase of 1. Staff is confident that this will occur if the funding package presented in Option 1 is approved by Council. In that scenario, the one project affected by the extension request would be Century Meadows 1, Unit 3. All three projects have been actively pursuing their final maps for the past year and have shown their intent to comply with the extension granted by Council in 2001.

In answer to Council Member Nakanishi, Mr. Sandelin explained that the difference between Option 1 and the recommendation on October 16 is that Option 1 is for short-term funding. The City would see the funds reimbursed in full in a period of two to four years. The prior proposal that Council rejected was a much longer period where the reimbursements would not begin to be realized until seven years out and might not be fully refunded for 10 or 15 years.

Mayor Pro Tempore Hitchcock noted that Option 1 indicates that it is to be repaid in seven years or less.

Mr. Sandelin replied that staff anticipates the projects to proceed at a rapid pace. Each project (Century Meadows 2 and 3 and future residential projects west of Mills Avenue) will have a burden assigned to them to reimburse for the pump station improvements built by the developer, Dr. Keszler. The rules of the loan agreement will read that those payments will first go against the loan balance before any funds could be reimbursed to Dr. Keszler. In essence, a loan period of seven years is established; however, any reimbursements that come from those projects would go to repay the City first before the developer would see any reimbursement.

Mayor Pro Tempore Hitchcock stated that if the recommendation is approved, the impact fees will not be funded the way they should be for a period of up to seven years.

City Manager Flynn pointed out that staff's proposal would result in an added benefit to the City of interest earnings, which would not be the case with impact fees.

In answer to Council Member Howard, Mr. Sandelin explained that once the City funds the loan the developer would receive \$230,000 in net proceeds, and the City would receive \$164,000. The transaction time depends on how quickly the City Manager and developer reach an agreement.

Council Member Howard asked why the loan period could not be reduced from seven to two years, since the development is expected to move along quickly.

City Manager Flynn replied that that could be taken as guidance; however, acceptance of the term would be up to the developer.

Mr. Sandelin clarified that the loan from the City to the developer would be \$394,000. The Fink Group would contribute \$178,000 and the developer would bring his own money in the amount of \$566,000 to build the project.

Mayor Pennino pointed out that it is important to understand that the \$230,000 being discussed is the obligation of other developers as they build the project out – not the developer signing the agreement.

Mayor Pro Tempore Hitchcock voiced opposition to the proposal, as she believed it to be a departure from what has been the City's policy in the past.

PUBLIC COMMENTS:

- Dave Williams, speaking on behalf of Dr. Keszler and himself, urged Council to consider the size of the lift station compared to the size of his project. Century Meadows 2 and 3 have plans to do production home developments and are expected to move through their sales program in a couple of years. Century Meadows 1 will take longer to sell the lots, as they will be made available to buyers who want to build custom homes. In addition projects will be done to the west, a new school is planned west of Mills Avenue, and the Luckey Project will likely be done in the next two to four years. Mr. Williams pointed out that the majority of the reimbursements will be coming from these projects and they will also result in a substantial amount of impact fees being paid to the City.

In response to Council Member Land, Mr. Sandelin reported that the consultant team of the impact mitigation fee report that was adopted by Council in 1991 did extensive evaluation of cash flow on the program and determined that the impact fee fund at that time was able to loan monies to construct all of the lift station facilities without requiring developers or the City to fund those projects from other sources other than the impact mitigation fee program. It did rely upon borrowing between the various funds to generate the capital necessary to build the major projects. Mr. Sandelin cited the most recent example of the Tienda Drive lift station where the City did take on the funding responsibility. It was an area with small developments similar to what is now being considered. None of them individually had the capital to fund it alone so the City stepped in and built a major facility. An identical circumstance occurred on Cluff Avenue.

MOTION #1:

Council Member Howard made a motion, Hitchcock second, to deny the request to extend the deadline for final map approval and retention of prior development impact mitigation fees and payment procedures for the Century Meadows One, Two, and Three residential subdivision projects.

DISCUSSION:

Mayor Pennino asked what the impact would be if Council denied the request to extend the deadline.

Mr. Sandelin replied that staff anticipates bringing three of the four subdivision maps to Council for approval on December 18. A fourth subdivision map comprises approximately 12.5 acres and the financial impact in the form of higher fees that the developer would occur is approximately \$249,000.

In reply to Council Member Land, Mr. Williams explained that the delay in bringing the final map to Council was because the former owner of Century Meadows 2 was not willing to do the easements that the City needed to install the public utilities.

VOTE:

The above motion carried by the following vote:

Ayes: Council Members – Hitchcock, Howard, and Mayor Pennino

Noes: Council Members – Land and Nakanishi

Absent: Council Members – None

MOTION #2:

Council Member Land made a motion, Nakanishi second, to adopt Resolution No. 2002-239 authorizing the City Manager to execute short-term funding agreements for the construction of the Harney Lane Lift Station.

DISCUSSION:

Mayor Pro Tempore Hitchcock opposed the motion as stated; however, she indicated that if the term were amended to two years she would consider it. She surmised that lots for custom homes would likely take seven years to build out and she did not believe it was right to shift the developer's cost to the City.

Council Member Howard concurred with Ms. Hitchcock.

Council Member Land felt that two years was too short a period and declined to amend his motion.

Mayor Pennino disagreed with the allegation that the proposal was shifting from past policy, as three lift stations were previously built by the City fronting the money for the development.

VOTE:

The above motion carried by the following vote:

Ayes: Council Members – Land, Nakanishi, and Mayor Pennino

Noes: Council Members – Hitchcock and Howard

Absent: Council Members – None

- I-4 "Review schematic design for Aquatics Facility project and authorize proceeding with construction documents phase"

Parks and Recreation Director Baltz recalled that the Council approved a concept plan for this project which consists of a 50-meter pool, and an additional 7,200 square feet of instructional and recreational water. The estimated project construction budget is \$6 million. By prior action Council authorized staff to move forward with the design of the project and allocated \$548,000. Planning and schematic design has been completed. Just over \$300,000 of a "not to exceed" amount has been approved for the construction documents phase of the project.

Mayor Pro Tempore Hitchcock asked Mr. Baltz if he would want to proceed with the construction documents phase if he knew that money for the project would not be available for three to five years.

Mr. Baltz replied that some aspects of the project might change over time; however, he did not believe it would result in having to completely redo the construction documents. He emphasized the importance of getting the design work finished for the project.

Community Development Director Bartlam pointed out that the Council recently approved the Building Codes, which will not change again for three years. He explained that the construction documents phase of the project will result in a set of drawings that can be finally plan checked by the City and then submitted for bids to contractors. The action being requested is for the Council to authorize the architects and their subconsultants to finalize the plans in significant detail, and as a result, get a final cost estimate. The next step in the process would be staff requesting authorization to go to bid on the project.

Council Member Howard noted that there have been some modifications in the design since it last came before Council, e.g. snack shop removed, bleachers are on hold, etc., and she asked Mr. Baltz to summarize the changes.

Mr. Baltz reported that the concession stand building has been broken out as a possible bid alternate. He stated that a little over four acres of property is needed for the project and a lot of the green spaces around the perimeter of the project have been reduced. There are fewer picnic tables and two diving boards instead of four. The meeting/party/rental rooms have also been held out as an alternate.

Council Member Howard believed that the modifications were very appropriate and suggested that they could be done later and perhaps paid for by private donations.

In reply to Council Member Nakanishi, Mr. Baltz estimated the construction documents phase to take between three and a half to four months to complete.

PUBLIC COMMENTS:

- Bob Johnson, Chair of the Parks and Recreation Commission, reported that the Swimming Pool Task Force has worked diligently and the Commission has met on numerous occasions regarding this project. He pointed out that the reason the City received funding from the State for past projects was because designs were completed.
- Randy Snider, Chair of the Swimming Pool Task Force, noted that a similar situation occurred with the library, i.e. the design was completed and it was held pending funding. The City was later successful in obtaining Federal funding for the library because it had the design to present for consideration.

In response to Mayor Pro Tempore Hitchcock, Mr. Snider reported that the Task Force felt that the recreational aspect of the Aquatics Center was important. The water slide may be staff intensive; however, there will be a charge for its use and it will be open only on a seasonal basis.

Council Member Land clarified that the design phase includes the final design, the plan and specification for preparation, and the construction cost estimation.

MOTION:

Council Member Land made a motion, Howard second, to approve the design work to proceed to construction documents preparation phase.

DISCUSSION:

Mayor Pennino commented that he received a call from John Griffin, who regrettably could not attend tonight's meeting; however, he encouraged Council to move forward on the project.

VOTE:

The above motion carried by a unanimous vote.

RECESS

At 9:02 p.m., Mayor Pennino called for a recess and the City Council meeting reconvened at 9:12 p.m.

I. REGULAR CALENDAR (Continued)

- I-5 "Receive Downtown Lodi Business Partnership 2002/03 Annual Report, adopt resolution of intent to levy annual assessment, and set public hearing for December 18, 2002 confirming the report and intent to levy annual assessment"

Tony Goehring, Economic Development Coordinator, introduced Lew VanBuskirk, Executive Director of the Downtown Lodi Business Partnership (DLBP), and stated that he is doing an outstanding job and the downtown area is flourishing.

Mr. VanBuskirk reported that last year the Parade of Lights was largest ever held and the next event is scheduled for December 5. The Lodi Farmers Market was named one of the top four markets in the State of California. Attendance exceeded 40,000, which was nearly a 20% increase over the past year. It is planned that next year's Farmers Market will extend through October and possibly into the month of November. Over 10,000 people attended the Family Faith Festival. DLBP Board President Peter Westbrook has coordinated the upcoming Dickens Festival and Faire and received corporate contributions in excess of \$30,000. Also participating and contributing funds for the event are 41 merchants in the downtown area. In partnership with the City, the DLBP is involved with the ongoing management of the parking situation, lighting of the trees on School Street, cleaning the downtown area, and maintaining the kiosks. Peter Westbrook has designed and maintains the DLBP's Website. The DLBP has also partnered with the Lodi Visitors and Convention Bureau and the Lodi District Chamber of Commerce.

Mr. VanBuskirk recalled that last year he pointed out that inequities in the assessments have occurred as the district has grown. The Board considered the matter in early 2002 and decided not to pursue making any changes at that time, due to aggressive marketing plans that were already underway. Amending the assessments and/or expanding the district is a long process, which will require a vote of the membership, public hearings, and Council action. A committee will be formed next year to make recommendations to restructure the assessment fees.

City Manager Flynn reported that the City contributes \$500,000 a year in direct costs for services related to Public Works, Police, and Parking Enforcement. Contributions made by the merchants in the downtown do not cover the cost and he believed that the people receiving the benefits should pay for the cost of services being provided to the downtown area.

Mayor Pennino suggested that Council consider forming a two by two meeting with representatives of the DLBP to discuss funding issues.

In response to Mr. Flynn's comments, Mr. VanBuskirk stated that Stockton is an example of what can happen when the city starts charging fees for services. He explained that Stockton at one time was the number one city in California to bring in movie makers. It brought a tremendous amount of revenue and sales tax to the city. When the police department started charging for the extra services, the industry left Stockton. In addition he pointed out that Pacific Avenue never regained its previous stature. He cautioned the Council to consider the consequences of what may happen by attempts to recover costs.

MOTION / VOTE:

The City Council, on motion of Council Member Land, Hitchcock second, unanimously received the Downtown Lodi Business Partnership 2002/03 Annual Report, adopted Resolution No. 2002-240 of intent to levy annual assessment, and set public hearing for December 18, 2002 confirming the report and intent to levy annual assessment.

- I-6 "Authorize funds from the Protocol Account and direct the City Clerk to coordinate the City Council reorganization reception to follow the December 4, 2002 Council Meeting (approx. \$1,300) and the annual City Employee Appreciation/Christmas Reception (approx. \$1,700)"

City Clerk Blackston noted that the request to authorize funds from the Protocol Account is necessary due to Resolution 2000-126, which imposed a \$1,000 ceiling for expenditures, above which requires Council approval. She reported that traditionally a reception is held following the City Council reorganization meeting. Guests include family members and friends of outgoing and incoming mayors and council members, community service award recipients and guests, City staff, and the public. The number of attendees at the December 4 reception is expected to be 150 and the cost is estimated at \$1,300. In addition, a request for expenditure approval is needed to proceed with arrangements for a holiday reception to acknowledge City employees. The City Clerk's Office has been responsible for coordinating the annual event on behalf of the Council. Costs associated with the reception at City Hall and cookies for off-site facilities is estimated at \$1,700. Ms. Blackston reported that the Protocol Account has nearly \$21,000 remaining from the original \$22,000 appropriation for the current budget year.

Mayor Pro Tempore Hitchcock stated that she had not been aware previously that the holiday reception for City employees was sponsored by the Council. She expressed reservations about using City funds for a Christmas party.

In reply to Mayor Pro Tempore Hitchcock, Deputy City Manager Keeter reported that Deputy City Clerk Jennifer Perrin had informed her that for the past 15 years, the holiday reception for City employees had been catered and was sponsored by the Council.

Council Member Howard recalled that wine for the Council reorganization reception was donated last year and expressed her opinion that all services and materials for these events should come from the budget versus outside sources. Ms. Blackston confirmed that the cost of the wine was included in the estimate.

Mayor Pro Tempore Hitchcock noted that the School District only pays for food if it is a working luncheon or an event that the public is invited to. She encouraged Council Member's feedback related to the appropriateness of the proposed expenditure.

Mayor Pennino pointed out that the Council previously allocated \$22,000 to the Protocol Account, and he believed the proposal would be an adequate expenditure of these funds.

Council Members Nakanishi and Land voiced support for the expenditure request.

MOTION:

Council Member Land made a motion, Howard second, to authorize funds from the Protocol Account and directed the City Clerk to coordinate the City Council reorganization reception to following the December 4, 2002 Council meeting (approximately \$1,300) and the annual City Employee Appreciation/Christmas Reception (approximately \$1,700).

DISCUSSION:

Mayor Pro Tempore Hitchcock stated that there is a significant difference between private businesses having a Christmas party for its employees, versus the use of public funds for the same purpose. She stated, however, that it is a small amount and she was willing to take the risk.

VOTE:

The above motion carried by a unanimous vote.

- I-7 "Hearing to consider the appeal of DC Builders to overturn the decision of the City Manager regarding the award of bid for the Henning Substation Block Wall and Gate Project"

City Attorney Hays explained that this is the final step in the bid protest procedure. DC Builders was an unsuccessful bidder in the Henning Substation Block Wall and Gate Project and has filed a protest. The City Manager rendered an opinion that did not favor DC Builders' claims and a hearing before the Council was requested by Randy Roxson, attorney for DC Builders.

Mr. Roxson stated that in order for Council to award the bid to the lowest bidder for this project, it will need to waive the City's rules, which were designed to provide for due process, fairness, and equal opportunity. The City Manager determined that the rules that were not followed were not significant. Mr. Roxson cautioned that waiving these rules will adversely tread upon the purpose of due process and could be setting precedence for future bidding. He stated that the City violated the rules for protesting bids at both the first and second levels by not meeting the five-day timeframe for response. In addition, at level one no fact of finding was submitted. Mr. Roxson asked Council to either award the contract to the lowest *responsible* bidder as defined in the rules, or direct staff to begin the process again for this project with a new invitation to bid.

Mr. Hays read the following statement from the City of Lodi Protest Procedures, "Upon receipt of the request for reconsideration, the City Manager shall schedule an informal administrative hearing with the protester and the department head. The hearing shall be held not later than five business days after the receipt of the request for reconsideration." He explained that this is the statement that Mr. Roxson alleges was not abided by. Mr. Hays explained that the problem with Mr. Roxson's argument is that he did have the hearing and consequently due process was met. There is no stated penalty in the procedures for having missed the timeline.

Council Member Land asked Mr. Roxson what he meant in his letter by, "the only thing missing were the cigars and the smoke filled room."

Mr. Roxson explained that he had been questioned aggressively by the City Manager as to why he felt that not filing the addendum was a significant violation. In addition, Mr. Hays had remarked at the meeting that Mr. Roxson was talking too much.

City Manager Flynn clarified that the addendum said that bidders had to be qualified contractors.

Mr. Hays explained that bidders needed to file a notice that they received the addendum. In reference to his comment made at the meeting about talking too much, Mr. Hays stated that he had directed the comment to the City Manager, not to Mr. Roxson.

Mr. Roxson stated that there were many flaws in the bid process for this project in addition to the protest rules being violated. The City Engineer's estimate was very low, yet Mr. Roxson was told by staff that it does not matter. Every bidder was on the plans and specifications list except the lowest bidder.

Council Member Land asked whether the owner of DC Builders was present, to which Mr. Roxson replied that he was not.

Mayor Pennino recalled that bids have been rejected for various reasons in the past, some of which appeared to be insignificant errors.

Mayor Pro Tempore Hitchcock acknowledged that due process was not followed and stated that there was no excuse for it other than it simply being an error. She read the sentence, "Failure to so include or acknowledge an addendum or clarification *may* result in a proposal being rejected as not responsive" and she noted that the word "may" gives some flexibility. She asked whether bids have been rejected previously for not including an addendum.

Mr. Hays replied that in the seven years he worked for the City of Lodi, if Council rejected a bid because an addendum was not acknowledged, it was because the addendum involved a change in quantities or something that would have effected the bid price. The addendum for the project in question merely states that they have to be a properly licensed contractor to perform the job. Mr. Hays surmised that the low bidder on the project may have obtained the plans from a builder's exchange, as he was not on the list of those who were sent plans and consequently was not sent the addendum.

Mayor Pennino countered that builder's exchanges receive addendums to plans and it is the contractor's responsibility to check for them.

Council Member Howard upheld the decision of the City Manager, as he had described justifiable reasons for the denial of the protest and demonstrated why his actions and decisions were accurate and timely.

Mr. Roxson asked Council to make public participants adhere to the rules as a matter of fairness.

Mayor Pro Tempore Hitchcock was opposed to bids being situational and suggested that the wording be changed in the future to "will result in the proposal being rejected". She emphasized the importance of being consistent and recommended that the matter be continued until such time as the Public Works Director can verify whether or not the City has ever rejected a bid because a contractor did not acknowledge an addendum requiring that they be licensed.

MOTION / VOTE:

The City Council, on motion of Council Member Land, Howard second, upheld the decision of the City Manager and denied the appeal of DC Builders. The motion carried by the following vote:

Ayes: Council Members – Howard, Land, and Nakanishi

Noes: Council Members – Hitchcock and Mayor Pennino

Absent: Council Members – None

- E-7 "Adopt resolution authorizing the City Manager to execute lease amendment for Lodi Station North Annex with Cheryl Lafebre, dba Lodi Greyhound and Western Union"

Council Member Howard was opposed to making the decrease in rent retroactive. A balance of \$14,000 is still due to the City and any reduced rent rate should not take effect until after Council takes action.

Council Member Nakanishi concurred with Ms. Howard.

Mayor Pennino suggested that this matter be continued to the next regular meeting, when questions could be addressed by the Public Works Director.

MOTION / VOTE:

The City Council, on motion of Council Member Land, Hitchcock second, unanimously voted to table the subject matter to the City Council meeting of December 18, 2002.

J. ORDINANCES

- J-1 Ordinance No. 1719 entitled, "An Ordinance Adopting The '2001 California Building Code,' Volumes 1, 2, And 3, Which Code Regulates The Design, Construction, Quality Of Materials, Use And Occupancy, Location, And Maintenance Of Buildings Or Structures In The City Of Lodi, Providing For The Issuance Of Permits And Collection Of Fees Therefore; Providing Penalties For The Violations Thereof; Repealing And Re-Enacting Sections 15.04.010, 15.04.020, 15.04.030, 15.04.040, 15.04.050, 15.04.055, 15.04.060, 15.04.070, 15.04.080, And 15.04.090 Inclusive Of The Code Of The City Of Lodi, And All

Other Ordinances And Parts Of Ordinances In Conflict Therewith" having been introduced at a regular meeting of the Lodi City Council held November 6, 2002 was brought up for passage on motion of Council Member Land, Nakanishi second. Second reading of the ordinance was omitted after reading by title, and the ordinance was then adopted and ordered to print by the following vote:

Ayes: Council Members – Hitchcock, Howard, Land, Nakanishi, and Mayor Pennino
Noes: Council Members – None
Absent: Council Members – None
Abstain: Council Members – None

- J-2 Ordinance No. 1720 entitled, "An Ordinance Adopting The '2001 California Plumbing Code' Providing For The Establishing Of Minimum Regulations For The Installation, Alteration, Or Repair Of Plumbing And Drainage Systems And The Inspection Thereof; Providing Penalties For The Violations Thereof; And Repealing And Re-Enacting Sections 15.02.010 Through 15.12.050 Inclusive Of The Code Of The City Of Lodi, And All Other Ordinances And Parts Of Ordinances In Conflict Therewith" having been introduced at a regular meeting of the Lodi City Council held November 6, 2002 was brought up for passage on motion of Council Member Howard, Land second. Second reading of the ordinance was omitted after reading by title, and the ordinance was then adopted and ordered to print by the following vote:

Ayes: Council Members – Hitchcock, Howard, Land, Nakanishi, and Mayor Pennino
Noes: Council Members – None
Absent: Council Members – None
Abstain: Council Members – None

- J-3 Ordinance No. 1721 entitled, "An Ordinance Adopting The '2001 California Mechanical Code,' Which Code Provides Regulations Controlling The Design, Construction, Installation, Quality Of Materials, Location, Operation, And Maintenance Of Heating, Ventilating, Comfort Cooling, Refrigeration Systems, Incinerators And Other Heat Producing Appliances In The City Of Lodi, Providing For The Issuance Of Permits And Collection Of Fees Therefore; Providing Penalties For The Violations Thereof; And Repealing And Re-Enacting Sections 15.08.010, 15.08.020, 15.08.030, 15.08.040, And 15.08.050 Inclusive Of The Code Of The City Of Lodi, And All Other Ordinances And Parts Of The Ordinances In Conflict Therewith" having been introduced at a regular meeting of the Lodi City Council held November 6, 2002 was brought up for passage on motion of Mayor Pro Tempore Hitchcock, Nakanishi second. Second reading of the ordinance was omitted after reading by title, and the ordinance was then adopted and ordered to print by the following vote:

Ayes: Council Members – Hitchcock, Howard, Land, Nakanishi, and Mayor Pennino
Noes: Council Members – None
Absent: Council Members – None
Abstain: Council Members – None

- J-4 Ordinance No. 1722 entitled, "An Ordinance Adopting The '2001 California Electrical Code,' Which Code Regulates The Installation, Alteration, Or Addition Of Electrical Wiring, Devices, Appliances, Or Equipment In The City Of Lodi; And Repealing And Re-Enacting Sections 15.16.010 Through 15.16.050 Of The Codes Of The City Of Lodi, And All Other Ordinances And Parts Of Ordinances In Conflict Therewith" having been introduced at a regular meeting of the Lodi City Council held November 6, 2002 was brought up for passage on motion of Council Member Land, Howard second. Second reading of the ordinance was omitted after reading by title, and the ordinance was then adopted and ordered to print by the following vote:

Ayes: Council Members – Hitchcock, Howard, Land, Nakanishi, and Mayor Pennino
Noes: Council Members – None
Absent: Council Members – None
Abstain: Council Members – None

- J-5 Ordinance No. 1723 entitled, "An Ordinance Adopting That Portion Of The State Building Standards Code That Imposes Substantially The Same Requirements As Are Contained In The Uniform Fire Code, 2000 Edition Published By The Western Fire Chiefs Association And The California Building Standards Commission With Errata, Together With Those Portions Of The 'Uniform Fire Code 2000 Edition,' And The Appendixes I-A, I-C, II-A, II-B, II-C, II-D, II-E, III-A, III-B, III-C, III-D, IV-A, IV-B, V-A, VI-A, VI-B, VI-C, VI-D, VI-G, VI-H, VI-I, VI-J, VI-K, The Uniform Fire Code Standards, '1997 Edition' As Amended By The 'Uniform Fire Code Standards, 2000 Edition,' Published By The Western Fire Chiefs Association, Not Included In The State Building Standards Code, As Modified And Amended By This Chapter, Are Adopted By This Reference Into This Chapter, And Are Hereby Collectively Declared To Be The City Of Lodi Fire Code Thereto, Which Code Provides Regulations Governing The Conditions Hazardous To Life And Property From Fire Or Explosion; Repealing And Reenacting Sections 15.20.010 Through 15.20.370 Inclusive Of The Code Of The City Of Lodi And All Other Ordinances And Parts Of Ordinances In Conflict Therewith" having been introduced at a regular meeting of the Lodi City Council held November 6, 2002 was brought up for passage on motion of Council Member Nakanishi, Hitchcock second. Second reading of the ordinance was omitted after reading by title, and the ordinance was then adopted and ordered to print by the following vote:

Ayes: Council Members – Hitchcock, Howard, Land, Nakanishi, and Mayor Pennino

Noes: Council Members – None

Absent: Council Members – None

Abstain: Council Members – None

- J-6 Ordinance No. 1724 entitled, "An Ordinance Of The Lodi City Council Amending The Official District Map Of The City Of Lodi And Thereby Prezoning The Parcels Located At 1243, 1301, 1335, And 1477 East Harney Lane (APN 058-230-14, 13, 22, And 21) From San Joaquin County AU-20 To R-2, Single Family Residential" having been introduced at a regular meeting of the Lodi City Council held November 6, 2002 was brought up for passage on motion of Council Member Land, Hitchcock second. Second reading of the ordinance was omitted after reading by title, and the ordinance was then adopted and ordered to print by the following vote:

Ayes: Council Members – Hitchcock, Howard, Land, Nakanishi, and Mayor Pennino

Noes: Council Members – None

Absent: Council Members – None

Abstain: Council Members – None

- J-7 Ordinance No. 1725 entitled, "An Ordinance Of The Lodi City Council Amending The Official District Map Of The City Of Lodi And Thereby Prezoning The Parcel Located At 13814 Lower Sacramento Road (APN 058-230-03) From R-VL (County), Residential Very Low Density To R-LD, Residential Low Density; And Further Prezoning A Four-Acre Portion Of 302 East Highway 12 (APN 058-030-07) From AU-20 (County), Agriculture-Urban Reserve To PUB, Public" having been introduced at a regular meeting of the Lodi City Council held November 6, 2002 was brought up for passage on motion of Council Member Howard, Land second. Second reading of the ordinance was omitted after reading by title, and the ordinance was then adopted and ordered to print by the following vote:

Ayes: Council Members – Hitchcock, Howard, Land, Nakanishi, and Mayor Pennino

Noes: Council Members – None

Absent: Council Members – None

Abstain: Council Members – None

K. COMMENTS BY CITY COUNCIL MEMBERS ON NON-AGENDA ITEMS

- Council Member Nakanishi submitted a resignation letter effective December 2, as he would be assuming office as California State Assembly Member, 10th District on that date (filed). He recalled that when he was elected in 1998 he was a critic of the City, believing that there was overspending and serious financial difficulties; however, since that time he has found it to be untrue. He stated that Lodi is well managed and highlighted the following accomplishments and goals:

- Lodi continues to have safe streets and will soon have a new police building and animal shelter;
- Fire Station #4 was dedicated on April 20 and Firefighter Paramedics are planned to become part of the Lodi Fire Department to ensure that citizens have the best possible emergency care;
- The street lighting program is nearing completion; electric rates in Lodi continue to be at least 30% lower than other electric providers;
- An infrastructure plan has been adopted to replace Lodi's aging water and sewer lines; the new Lodi Station parking structure ribbon cutting was held on August 28; and the areas of Sacramento Street, Elm Street, and Lower Sacramento Road have been greatly improved;
- With additional public meetings and community input the redevelopment plan will be brought forward in an effort to help the eastside community without the threat of eminent domain;
- Bo Katzakian Park and the Lodi Skate Park have been completed and plans are underway for other Parks and Recreation venues;
- The PCE/TCE litigation continues on its course in an effort to protect Lodi businesses and property owners;
- He noted that City Clerk Blackston serves as the "right hand" to the Mayor and Council; he commended Finance Director McAthie for the Government Finance Officers Association certificate; Human Resources Director Narloch for recruiting fine employees; Library Services Director Martinez for doing an excellent job; Community Services Director Lange for Hutchins Street Square, which serves hundreds of senior citizens; and Deputy City Manager Keeter for her assistance to him when he served as Mayor;
- The All Veteran's Plaza was dedicated on May 22;
- The City now has a Public Art Policy, which will define Lodi's special character; the first example was celebrated on October 17 at the fountain of the Lodi Multi Modal Station;
- Last year the Arch Bear was restored with a 23-karat gold-leaf finish;
- He thanked City Manager Flynn for his guidance, stating that he is known to be a wise and conservative manager;
- He thanked all the volunteers noting that they are the reason the City has earned the name "livable, lovable, Lodi."

In conclusion, Council Member Nakanishi expressed his confidence that the City was in good hands with the current administration and future Council Members. He promised to be a voice for Lodi on local issues in his capacity as Assembly Member.

- Council Member Howard wished Mr. Nakanishi well and hoped that everyone would have a happy Thanksgiving Day.
- Council Member Land commented on the following:
 - He looked forward to the swearing in ceremony in Sacramento on December 2 for Assembly Member Nakanishi;
 - Commended Cynthia Haynes for a great job coordinating the veterans celebration event;
 - Suggested that a letter be sent encouraging the return next year of the Washington D.C. United States Air Force Strings;
 - He is expecting his ninth grandchild to be born in Okinawa Japan next June.
- Mayor Pro Tempore Hitchcock reported that the Council served dinner to Michael Crete and his guests last weekend as a Boys and Girls Club fundraiser. She expressed thanks to Janet Hamilton for coordinating the dinner. She stated that it has been a pleasure working with Council Member Nakanishi whom she described as a gentle, kindhearted person, who added class to the Council.
- Mayor Pennino thanked staff for their work last Saturday related to the Council auction dinner and noted that Mr. and Mrs. Crete donated \$12,000 to the Lodi Boys and Girls Club. He wished everyone a happy Thanksgiving Day.

L. COMMENTS BY THE CITY MANAGER ON NON-AGENDA ITEMS

- City Manager Flynn thanked Council Member Nakanishi for his four years of service to the community. He announced that Library Director Martinez' birthday was last Monday and noted that the League of California Cities annual New Council Member conference will be held in January.

M. ADJOURNMENT

There being no further business to come before the City Council, the meeting was adjourned at 11:05 p.m.

ATTEST:

Susan J. Blackston
City Clerk